

74JEREPC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

THE REPUBLIC OF ECUADOR and
PETROECUADOR,

Plaintiffs,

v.

04 CV 8378 (LBS)

CHEVRONTEXACO CORPORATION and
TEXACO PETROLEUM COMPANY,

Defendants.

-----x

April 19, 2007

Before:

HON. LEONARD B. SAND,

District Judge

APPEARANCES

WINSTON & STRAWN, LLP
Attorneys for Plaintiffs
BY: ERIC BLOOM
RAUL HERRERA

JONES DAY
Attorneys for Defendants
BY: LOUIS K. FISHER

74JEREPC

1 (In open court)

2 THE COURT: Good afternoon. Just one moment, please.

3 Just state your name and who you represent so that the
4 court reporter can make a note.

5 MR. FISHER: This is Louis Fisher from Jones Day
6 representing Chevron and Texaco Petroleum Company.

7 MR. BLOOM: And this is Eric Bloom from Winston &
8 Strawn on behalf of the plaintiffs. And with us, your Honor,
9 also on the call is my partner, Raul Herrera.

10 MR. HERRERA: Raul Herrera with Winston & Strawn, your
11 Honor.

12 THE COURT: All right. I have received a notice of
13 motion to supplement the summary judgment record. I've
14 received letters from Jones Day dated April 6, 9th and 17th and
15 a letter from Winston & Strawn dated April 13th.

16 Insofar as there is a motion to supplement the summary
17 judgment record, am I correct that that is unopposed? Please
18 state your name.

19 MR. BLOOM: This is Eric Bloom.

20 Your understanding is correct. We did, however,
21 follow response, simply responding to the defendant's statement
22 as to the relevance or alleged relevance of the documents, but
23 we do not oppose the supplementation of the record.

24 THE COURT: All right. I've endorsed the motion
25 papers. Motion granted without opposition.

74JEREPC

1 Before we turn to the discovery questions, let me ask
2 this: The last time I inquired of counsel as to the status of
3 the litigation in Ecuador, I was told that a representative of
4 the Court was inspecting sites and that was -- and they were
5 awaiting a report from him. The documents which are just added
6 to the record include a statement as to the status of the case,
7 which would seem to indicate that it was farther advanced. Can
8 anybody enlighten me as to that? He said -- it says on the
9 fifth paragraph of the press release that the Chief Justice had
10 appointed expert Richard Cabrera to quantify the overall damage
11 within 120 days in order to establish the cost of remediation
12 finally, reaching the final stages of the case, he said.

13 What does that mean in terms of the status of the
14 litigation by the Lago Agrio plaintiffs in Ecuador?

15 MR. BLOOM: This is Eric Bloom. I made inquiry, your
16 Honor, in preparation for the call. As I understand it, and
17 consistent with what you just read, that case has now entered
18 what we refer to as the damages phase, where what they are
19 looking at is what kinds of remediation might be possible, and,
20 I mean, what the costs of such remediation would be.

21 THE COURT: And they do that prior to a determination
22 as to liability?

23 MR. BLOOM: That's correct.

24 MR. FISHER: Your Honor, this is Louis Fisher from
25 Jones Day. My understanding is that they have begun that phase

74JEREPC

1 with this new expert not only prior to the termination of
2 liability but prior to the completion of the site inspections
3 that have been going on for some time now, and that those two
4 things are going to proceed on a dual track. Chevron is
5 contesting a number of actions that the Court has recently
6 taken to, in our view, rush this case along.

7 One thing that's happened is at the beginning of the
8 proceedings the judge in Lago Agrio asked both sides to
9 identify a list of sites that they wanted to have these
10 inspections at. Both sides did that. The Lago Agrio
11 plaintiffs listed many more sites than the defendants. And
12 apparently, recently the Lago Agrio plaintiffs have not been
13 happy with the course of the inspections that they themselves
14 had requested, so they asked to not have the inspection, the
15 inspections that they had requested at many of these sites.
16 And that was the first thing that the judge did, was he granted
17 that request to allow him to reduce the number of inspections.
18 But there are still several inspections remaining to go.

19 And the second thing the judge did, which, again, in
20 our view is irregular and we're contesting it, is to appoint
21 this expert mentioned in the press release before the remaining
22 inspections have been completed.

23 THE COURT: And those remaining inspections are being
24 done by somebody else, is that right?

25 MR. FISHER: That's my understanding, your Honor.

74JEREPC

1 THE COURT: All right. So all of this is prior to any
2 argument or ruling on the legal issues in the case, is that
3 correct?

4 MR. FISHER: Well, this is Louis Fisher again. Well,
5 it's certainly prior to any ruling. I think it's fair to say
6 that there was some preliminary arguments on the legal issues
7 that were made, but the judge, you know, deferred to a later
8 time certainly the decision. And I would think that there
9 would be further argument on that down the road.

10 MR. BLOOM: But as I understand it, your Honor, I
11 think your Honor's understanding is correct. There is no
12 determination one way or the other on liability. I believe the
13 typical way that it's done down there is you get an entire
14 ruling all at once so liability and damages, for example, are
15 not bifurcated, as these sometimes are up here.

16 THE COURT: That was Mr. Bloom who just spoke?

17 MR. BLOOM: Yes.

18 THE COURT: All right. The reporter is looking very
19 unhappy because it's hard on the speaker phone to identify the
20 speakers.

21 All right. Now, let's turn to Chevron's request to
22 reopen discovery in light of the supplementation of the record,
23 and that is vigorously opposed by Ecuador. There are two
24 phases to that. One is document discovery, and my
25 understanding is Ecuador objects on two grounds. One is that

74JEREPC

1 discovery is over and that these matters were the subject of a
2 discovery request and responses. And as to the documents,
3 there is, again, a statement as to the discovery -- the efforts
4 made to locate documents. And no such documents are in the
5 possession or control of Ecuador.

6 I have this question that I'd like to address to
7 counsel for Chevron. My understanding is that the present
8 administration in Ecuador has been in place for approximately
9 eight weeks, but if support by the government of Ecuador is a
10 violation of the contract between Ecuador and Chevron, why
11 isn't that now established by the documents which have just
12 been made part of the record? Ecuador can hardly state we are
13 not supporting the Lago Agrio plaintiffs when it issues a press
14 statement to the contrary. Why isn't -- and it's now an
15 established fact.

16 MR. FISHER: Your Honor, this is Louis Fisher for
17 Chevron. Preliminarily, if I may, I wasn't sure if your Honor
18 had referenced earlier on, we had set sort of a reply letter
19 dated April 17th that we sent by Fed Ex. I wasn't sure if you
20 got that or not. I just wanted to let you know that we had
21 sent it.

22 To answer your question, we believe that it is
23 sufficiently established. We'd like the additional discovery
24 just in case your Honor ultimately thinks we need to establish
25 a little more than that. So that's really the short answer.

74JEREPC

1 We believe that if we get additional discovery or find out what
2 documents have been destroyed, we could establish even more
3 than this establishes. We don't think that's necessary, but
4 until your Honor rules, we don't necessarily have that comfort.

5 THE COURT: Well, I don't think that that's a reason
6 to conduct discovery. If I should conclude that it's relevant
7 but has not been sufficiently established, then obviously I
8 would advise. But it seems to me now that there is enough work
9 to be done in connection with this case, rather than to engage
10 in further discovery when the ultimate fact -- that is, that
11 there is at present a supportive relationship between the
12 government of Ecuador and the plaintiff -- Lago Agrio
13 plaintiffs -- does Ecuador now dispute that that relationship
14 exists?

15 Incidentally, I know Chevron is enamored with the word
16 collusion. They never meet and they never talk and they never
17 write; they collude. And, you know, I think maybe they --
18 that's overworked, but that's, as is -- is there any issue as
19 to whether the Republic of Ecuador is now supporting the claim
20 of the Lago Agrio plaintiffs? Is that a disputed issue?

21 MR. BLOOM: This is Eric Bloom on behalf of the
22 plaintiffs. I think all that we do not dispute is that certain
23 statements of support were made. The question that I have is,
24 but what is support? Leaders around the world, and certainly
25 in this country, make statements all the time. The

74JEREPC

1 appropriateness of those statements may well be debated, but
2 it's I think a leap that a statement of support constitutes a
3 breach of the 1995 settlement agreement which doesn't prohibit
4 any party from making any statements at any time.

5 THE COURT: All right. Obviously whether there's a
6 breach or not is a legal issue which is not going to be
7 resolved by discovery.

8 What is it that Chevron thinks could be established by
9 further discovery?

10 MR. FISHER: Well, your Honor, I think to begin with
11 we'd establish, to the extent it's not already been established
12 already, that this is far more than Mr. Bloom would like to
13 portray it, as a mere unthinking and renegade statement by a
14 new and wet behind the ears president. I think that this is
15 certainly consistent with what we've seen in the past from
16 e-mails that incidentally were deleted by Ms. Escobar, the
17 Deputy Attorney General. It's consistent with what we've seen
18 from the former Attorney General in writing to our own Attorney
19 General in the United States seeking his investigation of my
20 client.

21 And, you know, there's really no telling what else has
22 been deleted, because Ms. Escobar admitted that she regularly
23 deleted documents, notwithstanding the fact that we had a
24 pending --

25 THE COURT: All right. I've reread all that about the

74JEREPC

1 prior discovery and the claims of the legion and so on. It
2 seems to me that you should leave well enough alone. You now
3 have the ultimate statement by the president that they are
4 supporting, and I think he has some -- he goes beyond that and
5 says --

6 MR. FISHER: He says the support is going to include
7 helping them gather evidence.

8 THE COURT: So they are. I see nothing to be gained
9 by further discovery, and the application to reopen discovery
10 is denied.

11 Thank you, gentlemen.

12 MR. FISHER: Thank you, your Honor.

13 MR. BLOOM: Thank you, your Honor.

14 (Adjourned)

15
16
17
18
19
20
21
22
23
24
25